

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

02 OCT 2 PM 3 51

IN RE: PETITION OF XO TENNESSEE,)
INC. TO OPEN CONTESTED CASE)
PROCEEDING TO MONITOR)
COMPLIANCE WITH TRA RULES AND)
ORDERS ON DIRECTORY COVERS)

IN RE: DOCKET NO. 02-01106
DOCKET ROOM

**PETITION OF XO TENNESSEE, INC. TO OPEN CONTESTED CASE PROCEEDING
TO MONITOR COMPLIANCE WITH TRA RULES AND ORDERS
ON DIRECTORY COVERS**

Xo Tennessee, Inc. ("XO") petitions the Tennessee Regulatory Authority ("TRA") to open a contested case proceeding to monitor compliance with TRA Rule 1220-4-2-.15 concerning director covers, the Authority's previously issued orders on directory covers, and the recent decision of the Tennessee Supreme Court in *BellSouth Advertising and Publishing Corp. v. Tennessee Regulatory Authority*, Sup. Ct. No. M1998-00987-SC-R11-CV (July 10, 2002), affirming those orders. As explained further below, XO also suggests that the Authority appoint a Hearing Officer to resolve expeditiously any disputes that may arise between XO and BellSouth Advertising and Publishing Co. ("BAPCO") concerning BAPCO's directory covers.

DISCUSSION

As the Authority is aware, the Tennessee Supreme Court unanimously ruled on July 10, 2002 that the TRA had properly directed BAPCO to offer a competing local exchange carrier ("CLEC"), such as XO, the opportunity to place the CLEC's name and logo on the cover of BAPCO's "White Pages" in those markets where the CLEC has local customers. BAPCO was ordered to offer CLECs the opportunity to appear on BAPCO's directory covers under terms that

are both “just and reasonable” and are the same as the terms offered by BAPCO to BellSouth Telecommunications, Inc. (“BST”).¹

The Supreme Court’s decision is now final. The mandate has been issued, and, pursuant to the Court’s ruling, the TRA’s previous orders on directory covers are now in effect.

Shortly after the Court’s ruling, XO began requesting information from BAPCO concerning the implementation of the TRA’s rules and orders on directory covers. XO specifically requested that XO’s name and logo be placed on the cover of the next issue of the White Pages in both Memphis and Nashville. It is XO’s understanding that the deadlines for finalizing these directories are rapidly approaching.

In response to the XO’s request, BAPCO’s counsel recently sent the attached letter to counsel for XO. The letter describes in general terms BAPCO’s proposal for complying with the Court’s ruling. As the letter indicates, BAPCO intends to charge each CLEC approximately \$17,000 to \$18,000 a year for the right to place the carrier’s logo in a space one inch by one-quarter inch on the lower portion of the cover of the Memphis and Nashville directories. Presumably, the narrow shape of the space allocated would only permit a CLEC to print its name, not its logo, on the cover. Although the letter states that BST will also pay the same fees as the CLECs, the letter does not state(1) why, when BAPCO has never charged BST in the past, it is now “just and reasonable” for BAPCO to begin imposing charges on all carriers named on the cover,² (2) how the amount of the fee was determined, (3) whether a CLEC will have the

¹ See, *Petition of Nextlink Tennessee to Sanction BellSouth Advertising and Publishing Corp. and Enforce the TRA Order Regarding Telephone Directories*, Docket 98-00654, October 20, 1998, at 2. See also Docket 96-01692, final order issued March 14, 1998, at 9.

² As recently as July 12, 2002, BellSouth spokesman Kenny Blackburn was quoted in *The Tennessean* as saying “there are no plans at this time to charge fees for logo placement.” *The Tennessean*, July 12, 2002.

ability to place a square-shaped logo on the cover, (4) what "other pricing" is involved (see paragraph no. 2 of the letter), and (5) whether BST is also paying BAPCO for the right to appear on all other directory covers in BST's service area. Finally, the letter gives little indication of the overall appearance of the cover. Without reviewing a mock-up design, it is hard to determine whether BAPCO intends to comply with the TRA's orders. While the letter promises more detailed "terms and conditions" within seven to ten days, XO is concerned that many of these issues will remain unanswered.

Because of these unanswered issues and the relatively short period of time remaining to resolve them, XO respectfully suggests that the only practical manner in which the TRA can monitor compliance with the rules and orders on directory covers is to appoint a Hearing Officer to address these matters and any others that may arise in the next few weeks as directories are finalized.

As the TRA may recall, BAPCO's 1999 directory for the Nashville area included on the cover the logos of ICG and Nextlink (now XO) along with the logo of BST. Each logo was differently shaped but each occupied the same, total amount of space as every other carrier's logo. This arrangement was worked out by agreement between XO and BAPCO. That directory cover, the only one to comply with the TRA's rule prior to the issuance of a stay by the Court of Appeals, was later shown to the Supreme Court during argument to illustrate how, in practice, the TRA's orders had been implemented.

This time, however, BAPCO is attempting to unilaterally dictate the terms and conditions which CLECs must meet in order to be on the cover of the directories. XO submits that it is the responsibility of the TRA, not BAPCO, to determine whether those terms and conditions are "just and reasonable" and whether BAPCO has complied with the agency's rules and orders. For example, is the \$17,000 annual fee based on BAPCO's costs or is it based on the price of

advertising space? If based on cost, what is BAPCO's support for that figure? Why are the logo spaces long and narrow? What about carriers like XO and AT&T which have square-shaped logos? How does BAPCO propose to identify itself? Will the "BellSouth" portion of BAPCO's name be highlighted more than the rest?

It may well be possible for XO and BAPCO to resolve some of these issues informally as the parties have done before. But if such discussions break down, the eminent publication deadlines for next year's directories require that the agency have in place a mechanism for the quick resolution of any unresolved issues.

This is the first time since the fall of 1998 that the TRA has been involved in addressing the design of directory covers. Whatever precedents are established now will likely determine the appearance of BAPCO's directory covers in Tennessee for years to come. It is therefore important for the agency to actively involve itself in this process and make sure that the agency's rules and orders on directory covers are implemented in accordance with the agency's intent and the holding of the Supreme Court.

CONCLUSION

For these reasons, XO asks that the TRA open a new, contested case proceeding for the purpose of monitoring compliance with the TRA's rules and orders on directory covers and that the Authority designate a Hearing Officer to address any disputes that may arise.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

Henry Walker
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219
(615) 252-2363

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 22 day of October, 2002.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

Guilford F. Thornton, Jr.
Stokes & Bartholomew, P.A.
424 Church Street
27th Floor
Nashville, TN 37219



Henry Walker